RECORD AND BRIEFS

No. 16-498

Supreme Court, U.S.
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In The
Supreme Court of the United States

DAVID PATCHAK,

Petitioner,

v.

SALLY JEWELL, in her official capacity as Secretary of the United States Department of the Interior, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The District Of Columbia Circuit

INTERVENOR-RESPONDENT MATCH-E-BE-NASH-SHE-WISH BAND OF POTTAWATOMI INDIANS' OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Gun Lake Trust Land Reaffirmation Act, Pub. L. No. 113-179, 128 Stat. 1913, which ratifies and confirms the status of a tract of land owned by the United States in trust for the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians, and withdraws federal court jurisdiction over actions relating to such land, violates separation of powers principles under Article III of the Constitution.

2. Whether the Gun Lake Trust Land Reaffirmation Act deprives Petitioner of any right under the Due Process Clause of the Fifth Amendment.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
TABLE OF CONTENTS	ii
TABLE OF AUTHORITIES	iii
OPINIONS BELOW	1
JURISDICTION	1
STATEMENT OF THE CASE	1
SUMMARY OF ARGUMENT	6
ARGUMENT	8
I. Petitioner's Contention that the Gun Lake Act Violates Constitutional Separation of Powers Does Not Warrant Review	8
A. Section 2(b) Was a Proper Exercise of Congress' Constitutional Authority to Limit the Jurisdiction of the Lower Federal Courts Pursuant to this Court's Prior Rulings	8
B. Section 2(a) Was a Proper Exercise of Congress' Constitutional Authority to Amend the Underlying Substantive Law	12
C. The Decision Below Does not Conflict with Any Other Circuit Court Decision	16
II. Petitioner's Claim that the Gun Lake Act Has Deprived Him of Individual Rights Is Not Properly Before this Court and Should Not Be Reviewed	17
CONCLUSION	19

TABLE OF AUTHORITIES

Page

CASES

Aetna Life Ins. Co. v. Haworth, 300 U.S. 227 (1937) 13

Agilent Techs. v. Waters Techs. Corp., 811 F.3d 1326 (Fed. Cir. 2016) 3

Antoine v. Washington, 420 U.S. 194 (1975) 13

Ashcroft v. Mattis, 431 U.S. 171 (1977) 13

Assessors v. Osbornes, 76 U.S. 567 (1869) 9

Bank Markazi v. Peterson, 136 S.Ct. 1310 (2016) ..... *passim*

Bruner v. United States, 343 U.S. 112 (1952) 9

Carcieri v. Kempthorne, 497 F.3d 15 (1st Cir. 2007) 2

Carcieri v. Salazar, 555 U.S. 379 (2009) 2

Kline v. Burke Constr. Co., 260 U.S. 226 (1922) 9

Landgraf v. USI Film Prods., 511 U.S. 244 (1994) 9

Lauf v. E.G. Shinner & Co., 303 U.S. 323 (1938) ... 8, 18

Layne & Bowler Corp. v. Western Well Works, Inc., 261 U.S. 387 (1923) 16

Match-E-Be-Nash-She-Band of Pottawatomi Indians v. Patchak, 132 S.Ct. 2199 (2012) 3

McDonald v. Smith, 472 U.S. 479 (1985) 18

Miller v. French, 530 U.S. 327 (2000) 10

N.Y. Cent. R.R. Co. v. White, 243 U.S. 188 (1917) 18

Pennsylvania v. Wheeling & Belmont Bridge, 59 U.S. 421 (1885) 10

TABLE OF AUTHORITIES – Continued

Page

Plaut v. Spendthrift Farm, Inc., 514 U.S. 211 (1995) 14

Rice v. Sioux City Memorial Park Cemetery, 349 U.S. 70 (1955) 16

Robertson v. Seattle Audubon Soc., 503 U.S. 429 (1992) 14, 16, 17

Seattle Audubon Society v. Robertson, 914 F.3d 1311 (9th Cir. 1990) 16, 17

Sebelius v. Auburn Regional Medical Center, 133 S.Ct. 817 (2013) 8, 9

Sioux Tribe of Indians v. United States, 316 U.S. 317 (1942) 12

United States v. Klein, 80 U.S. 128 (1871) ..... *passim*

United States v. Lara, 541 U.S. 193 (2004) 12

Warth v. Seldin, 422 U.S. 490 (1975) 3

Wood v. Milyard, 132 S.Ct. 1826 (2012) 18

CONSTITUTIONAL PROVISIONS

U.S. Const. Art. I, § 8 12

U.S. Const. Art. II, § 2. 12

U.S. Const. Art. III, § 2 ..... 8, 9

STATUTES AND LEGISLATIVE MATERIALS

5 U.S.C. § 702 2

5 U.S.C. § 705 2

TABLE OF AUTHORITIES – Continued

Page

22 U.S.C. § 2772 14

25 U.S.C. §§ 462, *et seq* 12

25 U.S.C. § 465 2

25 U.S.C. §§ 2701, *et seq* 3

28 U.S.C. § 1254 1

Pub. L. No. 113-179, 128 Stat. 1913 ..... 4, 5, 6, 8

REGULATIONS

25 C.F.R. §§ 83.1-83.46 1

OTHER AUTHORITIES

70 Fed. Reg. 25596 (May 13, 2005) 4

S. Rep. No.113-194 (2014) 5, 6

Sup. Ct. R. 10 ..... 11, 16

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-26a) is reported at 828 F.3d 995. The opinion of the district court (Pet. App. 27a-48a) is reported at 109 F. Supp. 3d 152.

JURISDICTION

The judgment of the court of appeals was entered on July 15, 2016. The petition for a writ of certiorari was filed on October 11, 2016. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

The Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians ("Gun Lake Tribe" or "Tribe") is a federally-recognized Indian tribe whose members descend from a band of Pottawatomi Indians led by Chief Match-E-Be-Nash-She-Wish, and who occupied present day western Michigan. Although the United States entered into treaties with the Tribe and had a history of interacting with the Tribe on a nation-to-nation basis, the Tribe did not gain federal recognition under modern federal acknowledgment procedures until 1999. 25 C.F.R. §§ 83.1-83.46.

Because the Tribe lacked trust land for use as a reservation, in 2001, the Tribe petitioned the Secretary

of the Interior to acquire a 147-acre tract of land in Wayland Township, Michigan, known as the "Bradley Tract," for the benefit of the Tribe, pursuant to authority delegated to the Secretary by Congress in Section 5 of the Indian Reorganization Act ("IRA"), 25 U.S.C. § 465. The Department of the Interior approved the petition and announced its intent to acquire the Bradley Tract in trust for the benefit of the Tribe in 2005.

Petitioner, a private landowner residing several miles from the Bradley Tract, filed the present lawsuit in federal district court challenging the trust acquisition in 2008, invoking the court's jurisdiction under the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 702, 705. Petitioner argued that the Secretary lacked authority for the trust acquisition under the IRA because the Tribe was not formally "recognized" by the United States when the IRA was enacted in 1934.[1] The district court granted the Tribe's motion to intervene as a defendant.

After the district court denied Petitioner's motion for injunctive relief, the Secretary acquired title to the Bradley tract in trust for the benefit of the Tribe.

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[1] The Petitioner's claim was purportedly based on arguments originally rejected by the First Circuit in *Carcieri v. Kempthorne*, 497 F.3d 15, 21-22 (1st Cir. 2007) but later adopted by this Court's decision in *Carcieri v. Salazar*, 555 U.S. 379, 395 (2009) ("We hold that the term 'now under Federal jurisdiction' in [the IRA] unambiguously refers to those tribes that were under the federal jurisdiction of the United States when the IRA was enacted in 1934."). The Department of the Interior has since concluded that the Gun Lake Tribe was both "recognized" and "under federal jurisdiction" when the IRA was enacted in 1934. See Pet. App. at 5a.

Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak, 132 S.Ct. 2199, 2204 (2012) ("*Patchak I*"). The district court subsequently dismissed Petitioner's suit, holding, *inter alia*, that he lacked prudential standing. The Tribe then invested approximately $195 million to construct a gaming facility on the Bradley Tract.[2]

Petitioner appealed the district court's decision, and the D.C. Circuit reversed, holding that Petitioner had standing to bring this suit. This Court granted certiorari and affirmed the Court of Appeals' decision.[3] The case was then remanded to the district court for further proceedings.

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[2] The Tribe has been operating the gaming facility since February 2011 pursuant to a gaming compact with the State of Michigan entered into pursuant to the Indian Gaming Regulatory Act, 25 U.S.C.§§ 2701, *et seq*. The facility employs over 1,000 people, and as of September 2014, the Tribe had made over $52 million in revenue-sharing payments to state and local governments pursuant to its compact with the State of Michigan.

[3] Petitioner claims that this Court's decision in *Patchak I* was a "substantive ruling" that Patchak's case "may proceed." Pet. at i, 20. However, that decision merely established that Patchak had *standing* to bring the instant claim. A ruling that a party has standing simply means that the court *may* "decide the merits of the dispute or of particular issues." *Warth v. Seldin*, 422 U.S. 490, 492 (1975). Moreover, "[j]urisdiction and standing are concepts distinct from each other," *Agilent Techs. v. Waters Techs. Corp.*, 811 F.3d 1326, 1330 (Fed. Cir. 2016), and this Court's 2012 *Patchak* decision on *standing* could not have addressed the issue of whether the courts below had *jurisdiction* to entertain Petitioner's suit in light of Congress' *2014* enactment of the Gun Lake Trust Land Reaffirmation Act.

Following this Court's decision, Petitioner inexplicably did not pursue his claim in the district court for nearly two years. In the meantime, the Gun Lake Trust Land Reaffirmation Act, Pub. L. No. 113-179, 128 Stat. 1913 was introduced in Congress, underwent committee hearings and debate in both the House of Representatives and the Senate, and, prior to the district court's initial status conference on remand, Congress enacted the Act and President Obama signed the Act into law.

The Act ratifies and confirms the trust status of the Bradley Tract and withdraws federal court subject matter jurisdiction over actions related to the land.

The entire text of the Act is as follows:

> (a) In General – The land taken into trust by the United States for the benefit of the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians and described in the final Notice of Determination of the Department of the Interior (70 Fed. Reg. 25596 (May 13, 2005)) is reaffirmed as trust land and the actions of the Secretary are ratified and confirmed.
>
> (b) No Claims – Notwithstanding any other provision of law, an action (including an action pending in a Federal court as of the date of enactment of this Act) relating to the land described in subsection (a) shall not be filed or maintained in a Federal court and shall be promptly dismissed.

> (c) RETENTION OF FUTURE RIGHTS – Nothing in this Act alters or diminishes the right of the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians from seeking to have any additional land taken into trust by the United States for the benefit of the Band.

Pub. L. No. 113-179, 128 Stat. 1913.

Through the Act, Congress sought to provide the Tribe with "certainty to the legal status of the land" that comprises the Tribe's reservation, upon which it relies for economic development, and which had been "place[d] in jeopardy" by the instant litigation. S. Rep. No. 113-194, at 2 (2014).

The parties submitted summary judgment briefing on both the effect of the Act and the merits of Petitioner's APA claim. The district court dismissed Petitioner's suit, holding that the Act divested it of jurisdiction to hear Petitioner's challenge and that it did not violate the Constitution.

The D.C. Circuit affirmed. *See* Pet. App. 1a-26a. The court held that the Act had stripped the lower federal courts of jurisdiction to consider the merits of Petitioner's complaint. The court of appeals further

rejected Petitioner's contention that the Act's withdrawal of jurisdiction conflicts with *United States v. Klein*, 80 U.S. 128 (1871).[4]

SUMMARY OF ARGUMENT

Congress enacted the Gun Lake Trust Land Reaffirmation Act, Pub. L. No. 113-179, 128 Stat. 1913, ("Gun Lake Act" or "Act") for the express purpose of providing "certainty to the legal status" of a tract of land that comprises the reservation of the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians ("Gun Lake Tribe" or "Tribe"), as the land had been "place[d] in jeopardy" by the instant litigation. S. Rep. No. 113-194, at 2 (2014). The Act did so first by ratifying and confirming the Secretary of the Interior's decision to acquire the land in trust for the benefit of the Tribe, and second by withdrawing the jurisdiction of the federal courts over any legal actions relating to the land.

By ratifying the land's trust status, Congress amended applicable law as a function of its constitutionally-derived plenary and exclusive power over Indian affairs, which includes the power to create and

[4] The court also rejected Petitioner's claims that the Gun Lake Act violated his First Amendment right to petition and his claim that the Act deprived him of property (his cause of action) in violation of his Fifth Amendment due process rights, and that the Act was an unconstitutional Bill of Attainder. See Pet. App. at 12a-20a. Petitioner has not challenged the court of appeals' rulings on these claims.

define Indian trust land. And by withdrawing federal court jurisdiction, Congress exercised its broad constitutionally derived power to define and limit the jurisdiction of the inferior courts.

This exercise of Congress' authority does not offend constitutional separation of powers principles, and is directly in line with this Court's recent decision in *Bank Markazi v. Peterson*, 136 S.Ct. 1310 (2016), as the D.C. Circuit recognized below.

Petitioner's claim that the Act violates his "right to have his claim adjudicated by a neutral judge, free from political interference," and that it "deprived Petitioner of his right to equal protection guaranteed by the Due Process Clause of the Fifth Amendment" was not raised below, and therefore is not properly before the Court.

Consequently, and as set forth herein, the Petition for Writ of Certiorari should be denied.

ARGUMENT

I. Petitioner's Contention that the Gun Lake Act Violates Constitutional Separation of Powers Does Not Warrant Review

a. Section 2(b) Was a Proper Exercise of Congress' Constitutional Authority to Limit the Jurisdiction of the Lower Federal Courts Pursuant to this Court's Prior Rulings

Petitioner's challenge to the Gun Lake Act's constitutionality derives solely from his objection to the effect of Section 2(b) of the Act. Pub. L. No. 113-179, 128 Stat. 1913. Specifically, he contends that Section 2(b) conflicts with *United States v. Klein*, 80 U.S. 128 (1871), because it withdraws federal court jurisdiction over a pending case. That argument is without merit and does not warrant review.

The Constitution grants Congress expansive power "to define and limit the jurisdiction of the inferior courts of the United States." *Lauf v. E.G. Shinner & Co.*, 303 U.S. 323, 330 (1938); *see also* U.S. Const. Art. III, § 2, cl. 1.[5] As a consequence of this power, Congress

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[5] Petitioner claims in a footnote that the Circuit Court mistakenly viewed the Gun Lake Act as removing the jurisdiction of the federal courts. (Pet. at 21 n.7.) *citing Sebelius v. Auburn Regional Medical Center*, 133 S.Ct. 817, 824 (2013). In that case, this Court stated that statutes must be treated as nonjurisdictional unless "clearly stated," but further stated that "[t]his is not to say that Congress must incant magic words in order to speak clearly." *Id.* Petitioner fails to explain how the prohibition of claims in Section 2(b) does not clearly express Congress' intent to withdraw jurisdiction.

may also withdraw existing jurisdiction and subject pending cases to the new jurisdictional limitation. It is well established that "[t]he Constitution simply gives to the inferior courts the capacity to take jurisdiction in the enumerated cases, but it requires an act of Congress to confer it." *Kline v. Burke Constr. Co.*, 260 U.S. 226, 234 (1922). Importantly, "the jurisdiction having been conferred may, at the will of Congress, be taken away in whole or in part; and if withdrawn without a saving clause all pending cases though cognizable when commenced must fall." *Id.* This Court has applied this general principle on numerous occasions. *See Landgraf v. USI Film Prods.*, 511 U.S. 244, 274 (1994) (noting that the Court has "regularly applied intervening statutes conferring or ousting jurisdiction" to pending cases); *Bruner v. United States*, 343 U.S. 112, 116-17 (1952) ("[W]hen a law conferring jurisdiction is repealed without any reservation as to pending cases, all cases fall with the law. . . ."); *Assessors v. Osbornes*, 76 U.S. 567, 575 (1869) (holding that jurisdiction "was conferred by an act of Congress, and when that act of Congress was repealed the power to exercise such jurisdiction was withdrawn, and inasmuch as the repealing act contained no saving clause, all pending actions fell, as the jurisdiction depended entirely upon the act of Congress.").

Congress' withdrawal of federal court jurisdiction over actions related to the Bradley Tract does not run contrary to its Article III powers under the Constitution. To the contrary, pursuant to principles long recognized by this Court, the Act is squarely within

Congress' established power to withdraw jurisdiction from the lower federal courts and to direct the courts to apply the new jurisdictional limitation.[6]

Despite these clear constitutional principles, the Petitioner maintains that the Gun Lake Act violates constitutional separation of powers principles as discussed in *Klein*. This is not so. In *Klein*, the executor of the estate of a Confederate sympathizer sought to recover the value of property seized by the United States during the civil war under a statute that allowed recovery if the decedent had not aided in the rebellion. *United States v. Klein*, 13 Wall. 128 (1871). The Supreme Court held in a separate case that a presidential pardon satisfied the burden of proving that no aid had been given. *Id.* While *Klein*'s case was pending, Congress enacted legislation that provided that if a claimant had been offered a presidential pardon as proof that he had not given aid, it would instead be construed as proof of the opposite, and the case must be dismissed for lack of jurisdiction. *Id.* at 133-34. This Court held that the statute was unconstitutional as it "prescribe[d] rules of decision to the Judicial Department of the government in cases pending before it[.]"

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[6] Significantly, the Act's withdrawal of jurisdiction over actions relating to the Bradley Tract was among the less intrusive powers that Congress could have exercised to provide security over this tract of land. Pursuant to this Court's decisions in *Miller v. French*, 530 U.S. 327, 348 (2000) and *Pennsylvania v. Wheeling & Belmont Bridge*, 59 U.S. 421 (1885), Congress could have vacated an injunction barring the Secretary from taking the land into trust.

Id. at 146. *Klein* concluded that Congress had overreached its authority by changing the effect of a presidential pardon that had previously been granted. *Id.* at 148.

Klein does not hold that statutes that withdraw jurisdiction from a pending case violate constitutional separation of powers principles. To the contrary, this Court in *Klein* held that Congress had improperly directed the court to give an effect to a presidential pardon that was contrary to the effect that this Court had already decided such a pardon should have. *Id.* at 146. The Gun Lake Act does not suffer these same defects, as it does not direct the federal courts to make any substantive ruling on the merits of Patchak's claims; instead, it merely withdraws the lower courts' jurisdiction to entertain any claims related to the Bradley Tract.

Petitioner does nothing to dispute the settled principles first pronounced by this Court in *Klein*, which the Court of Appeals properly stated and applied. Thus the error Petitioner asserts merely consists of the "misapplication of a properly stated rule of law," and is not worthy of this Court's review. Sup. Ct. R. 10.

B. Section 2(a) Was a Proper Exercise of Congress' Constitutional Authority to Amend the Underlying Substantive Law

Petitioner does not raise any challenge here to the constitutionality of Section 2(a) concerning the ratification and confirmation of the Bradley Tract's trust status. Consequently, whether the validity of that section warrants review is not before this Court. Petitioner claims, however, that the court of appeals incorrectly held that Section 2(a) amended the substantive law applicable to Petitioner's claims.

In addition to Congress' clear power to exercise its authority to define jurisdiction in this case, the Constitution has also granted Congress "plenary and exclusive" authority to legislate with respect to Indian affairs in the Indian Commerce Clause, U.S. Const. Art. I, § 8, cl. 3 and the Treaty Clause, U.S. Const. Art. II, § 2, cl. 2. *United States v. Lara*, 541 U.S. 193, 200 (2004). As a consequence, the power to acquire Indian lands lies "exclusively in Congress . . . , and any executive power over Indian lands must be traced to Congressional delegation of its authority." *Sioux Tribe of Indians v. United States*, 316 U.S. 317, 326 (1942). It is, therefore, Congress' constitutional prerogative to create and define Indian trust land as a direct exercise of its own plenary authority, although it has delegated some of that power to the Secretary of the Interior in the Indian Reorganization Act. *See id.*; *see also* 25 U.S.C. §§ 462, *et seq*. Further, when Congress ratifies

and confirms actions of the Executive Branch regarding Indian affairs, as it did here, this Court has held that it does so "as the exercise . . . of its 'plenary power . . . to deal with the special problems of Indians that is drawn both explicitly and implicitly from the Constitution itself.'" *Antoine v. Washington*, 420 U.S. 194, 204 (1975).[7] Congress' authority, therefore, necessarily encompasses the power to define and create trust land as a function of its plenary power under the Constitution, by ratifying and confirming a land acquisition undertaken by the Secretary of the Interior pursuant to her delegated authority. *See id.*

Recent decisions, including this Court's recent decision in *Bank Markazi v. Peterson*, 136 S.Ct. 1310 (2016), have made clear that "*Klein* does not inhibit

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[7] Petitioner contends that the meaning of the terms "ratified and confirmed" are unclear (Pet. at p. 21), but this Court in *Antoine* has explained the long history and meaning of these terms. *Antoine*, 420 U.S. at 200. Reviewing the Indian statutes that "ratified and confirmed" Executive action, this Court explained that with regard to Indians, "[o]nce ratified by Act of Congress, the [actions of the Executive branch] become law, and like treaties the supreme law of the land." *Antoine*, 420 U.S. at 204. Therefore, contrary to Petitioner's argument at Pet. pp. 21-24, "ratification and confirmation" constitutes a change in the law. Further, such ratification necessarily has a retroactive effect. *See id.* Even if it did not, Petitioner's additional argument, raised for the first time here, that he should be entitled to a ruling on the Secretary's authority to take the land into trust notwithstanding the present trust status of the land, would violate the rule against advisory opinions. *See, e.g., Ashcroft v. Mattis*, 431 U.S. 171, 172 (1977) ("For a declaratory judgment to issue, there must be a dispute which 'calls, not for an advisory opinion upon a hypothetical basis, but for an adjudication of present right upon established facts.'") (*quoting Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 242 (1937)).

Congress from 'amend[ing] applicable law.'" *Id.* at 1323 (*quoting Robertson v. Seattle Audubon Soc.*, 503 U.S. 429, 441 (1992)); *see also Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 218 (1995). *Bank Markazi* is particularly instructive here as it demonstrates the very settled nature of this principle.

In *Bank Markazi*, victims of Iran-sponsored acts of terrorism sought to enforce judgments obtained by default, seeking turnover of $1.75 billion in bond assets allegedly owned by Bank Markazi. An existing statute had empowered the President to determine which assets of this nature would be subject to execution of judgment pursuant to exceptions in the Foreign Sovereign Immunities Act of 1976. In a 2012 Executive Order, the President exercised these powers to delineate which assets in Iranian financial institutions would be subject to execution of judgment, but the scope of the Executive Order was contested. Congress, therefore, enacted a freestanding statute, not an amendment to the existing statutory scheme, that rendered the bond assets sought by the victims subject to execution. 22 U.S.C. § 2772(a)(1). The statute specifically identified the caption and case number of the ongoing proceeding in federal court and required that the assets subject to the statute meet criteria that matched the particular assets at issue. *Bank Markazi*, 136 S.Ct. at 1319-20.

This Court held that the statute did not violate the principles set forth in *Klein*, holding that "Congress may indeed direct courts to apply newly enacted, outcome-altering legislation in pending cases" where

Congress has amended applicable law, even where legislation is specifically directed at a particular case. *Id.* at 1323-25. The Court explained that the statute at issue "did not simply amend pre-existing law," *id.* at 1325, it had "changed the law by establishing new standards" clarifying "that, if Iran owns certain assets, the victims of Iran-sponsored terrorist attacks will be permitted to execute against those assets." *Id.* Further, its power to do so was clearly within Congress' prerogative despite the fact that it had delegated some of that authority to the Executive. *Id.* at 1328-29.

The Court of Appeals properly concluded that *Bank Markazi* controls this case, and that the Gun Lake Act does not violate constitutional separation of powers principles. As in *Bank Markazi*, Congress enacted a statutory scheme pursuant to its constitutional authority (here, its plenary authority over Indian affairs). It delegated some of that authority to the Executive. The Executive exercised that authority in a manner that was contested by Petitioner in litigation. Congress asserted its authority to establish a new legal standard applicable to Petitioner's claims, first, "[t]hrough its ratification and confirmation of the Department of the Interior's decision to take the Bradley Property into trust" and, second, through "its clear withdrawal of subject matter jurisdiction in Section 2(b)." (Pet. App. at 11a.)

Indeed, the Gun Lake Act is far less intrusive on the powers of the judiciary than the statute at issue in *Bank Markazi*. In the Gun Lake Act, Congress established a new legal standard by establishing the land's

trust status, a clear function of its plenary authority over Indian affairs, separate and apart from any litigation. The *Bank Markazi* statute, on the other hand, established a new standard as to what assets are subject to execution of judgment, a standard that can only apply to a judicial proceeding.

Petitioner fails to distinguish the Court of Appeals' decision from *Bank Markazi*. Thus his claim that "[t]his case presents an important opportunity for the Court to clarify the boundaries" of Congress' authority vis-à-vis constitutional separation of powers is without merit. Pet. at 13 (*citing* Sup. Ct. R. 10(c)).

C. The Decision Below Does not Conflict with Any Other Circuit Court Decision[8]

Petitioner's contention that the Court of Appeals' decision is in tension with the Ninth Circuit's decision in *Seattle Audubon Society v. Robertson*, 914 F.3d 1311 (9th Cir. 1990), *rev'd, Robertson v. Seattle Audubon Society*, 503 U.S. 429 (1992) is incorrect.

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[8] The narrow applicability of the Gun Lake Act also establishes a basis for denial of certiorari in this matter, as it does not present the type of "important question of federal law" warranting review. Sup. Ct. R. 10(c). This Court long has held that a writ of certiorari is only warranted "in cases involving principles the settlement of which is of importance to the public, as distinguished from that of the parties. . . ." *Rice v. Sioux City Memorial Park Cemetery*, 349 U.S. 70, 79-80 (1955) (*quoting Layne & Bowler Corp. v. Western Well Works, Inc.*, 261 U.S. 387, 393 (1923)).

Petitioner claims that the D.C. Circuit's decision has interpreted *Klein* differently than the Ninth Circuit's decision in *Audubon Society*, wherein it held that "a statutory provision directing decisions in pending cases without amending any law [is] unconstitutional." Pet. Br. at p. 15 (*citing Seattle Audubon Society*, 914 F.3d 1311). This well-established interpretation of *Klein* does not differ from the Court of Appeals' formulation below. (Pet. App. at pp. 8a-9a.) ("Congress may not direct the result of pending litigation unless it does so by supply[ing] new law.") (*quoting Robertson*, 503 U.S. at 439). More importantly, this Court affirmed this basic principle again in *Bank Markazi*, thus nullifying Petitioners' Circuit-conflict-basis for granting certiorari. *Bank Markazi*, 136 S.Ct. at 123 ("*Klein* does not inhibit Congress from "amend[ing] applicable law."). Accordingly, this case should not warrant this Court's attention based on any asserted conflict between Circuit Court decisions.

II. Petitioner's Claim that the Gun Lake Act Has Deprived Him of Individual Rights Is Not Properly Before this Court and Should Not Be Reviewed

In a final section, Petitioner raises two issues that he did not raise below: (1) whether he was improperly stripped of his individual right to have his claim adjudicated by a neutral judge, free of political interference; and (2) whether the Gun Lake Act deprived him of his right to equal protection guaranteed by the Fifth Amendment's Due Process Clause.

The first issue was not raised below, and therefore is not properly before this Court. As this Court "ordinarily abstain[s] from entertaining issues that have not been raised and preserved in the court of first instance," it should not hear this claim. *See, e.g.*, *Wood v. Milyard*, 132 S.Ct. 1826, 1834 (2012). Even if it were properly before the Court, it would not warrant its review. Despite the fact that Petitioner frames this claim as related to the separation of powers issues, the argument is similar to Petitioner's failed claim below that the Gun Lake Act burdened his First Amendment right to petition. Pet. at 24-27. The Court of Appeals properly concluded that the right to petition is not an absolute right and is, more importantly, "subject to Congress' Article III power to define and limit the jurisdiction of the inferior courts of the United States." Pet. App. A at 13a (*citing inter alia McDonald v. Smith*, 472 U.S. 479, 484 (1985); *Lauf*, 303 U.S. at 330). Petitioner makes no argument to the contrary, and hence this claim does not warrant review.

Petitioner also did not make an equal protection argument based on the Fifth Amendment below, and so it should not be considered here. *See, e.g.*, *Wood*, 132 S.Ct. at 1834. Though Petitioner argued below that the Gun Lake Act deprived him of his alleged property right under the Fifth Amendment, the Court of Appeals rejected it, *inter alia*, because Petitioner could not make out a right that had been denied to him, as "[n]o person has a vested interest in any rule of law, entitling him to insist that it shall remain unchanged for his benefit." Pet. App. A at 16a (*quoting N.Y. Cent.*

R.R. Co. v. White, 243 U.S. 188, 198 (1917)). Petitioner does not refute this aspect of the Court of Appeals' decision here, but instead raises a new equal protection claim that was not raised below. Review of this question is therefore not warranted.

CONCLUSION

The Petitioner's writ of certiorari should be denied.

November 11, 2016

Respectfully submitted,

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